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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

In re:	*	Chapter 11
	*	
CIRCUIT CITY STORES, INC., et al.,	*	Case No. 08-35653 (KRH)
	*	
Debtors.	*	(Jointly Administered)
* * * * *	*	* * * *

**LANDLORDS' MOTION AND SUPPORTING MEMORANDUM
FOR AN ORDER COMPELLING PAYMENT OF POST-PETITION RENT
AND GRANTING RELATED RELIEF AND SUPPLEMENT TO
JOINDER IN LIMITED OBJECTION (DKT. NOS. 277 AND 354)**

120 Orchard LLC, 427 Orchard LLC and FT Orchard LLC (collectively, "Landlord") by and through their undersigned attorneys, hereby (a) move this Court to compel Debtors to pay post-petition rent under a nonresidential real property lease, pursuant to, *inter alia*, Bankruptcy Code Section 365(d)(3) and, (b) supplements its Joinder in Limited Objection (Dkt. Nos. 277 and 354), and in support thereof, respectfully states:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

BASES FOR RELIEF

2. The statutory bases for the relief requested herein are Sections 365(d)(3) and/or 503(b)(1)(A) of the Bankruptcy Code.

FACTUAL BACKGROUND

3. On November 10, 2008, Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, §§ 101 - 1532 (as amended, the “Bankruptcy Code”).

4. Landlord is the lessor, and Circuit City Stores, Inc. (“Debtor”) is the lessee, under that certain lease agreement dated September 13, 1995, by assignment dated January 30, 2002 (together, the “Prime Lease”), for the nonresidential real property premises located at 4381 Golf Road, Skokie, Illinois (the “Premises”). True and accurate copies of documents which constitute the Prime Lease are attached hereto as “Exhibit A.”

5. Golf Galaxy, Inc. (“GGI”) is the sublessee, and Debtor is the sublessor, under that certain sublease agreement dated on or about October 20, 2005 (the “GGI Sublease”), pursuant to which GGI sub-leased a portion of the Premises.

6. “Staples” (e.g., Staples the Office Superstore East, Inc., et al.) is the sublessee, and Debtor is the sublessor under that certain sublease agreement dated on or about January 12, 2005 (the “Staples Sublease”), pursuant to which Staples sub-leased a portion of the Premises.

7. Pursuant to the Prime Lease, the Debtor was required to pay, on the first day of November 2008, certain base rent and CAM charges (the “November Rent”). The Debtor has not paid the November Rent.

8. The Debtor has not paid Landlord base rent and CAM charges due under the Prime Lease for the post-petition period November 10, 2008 through November 30, 2008 in the pro-rated amount of \$55,626.72 (the “November Administrative Rent”). Upon information and belief, including, but not limited to, the Limited Objection filed on behalf of GGI at Docket No. 277 (in which the Landlord has joined at Docket No. 354), the Debtor was paid at least a portion of the monthly rent and CAM charges, as well as estimated real estate taxes, due from GGI and/or “Staples” for the month of November 2008. The Debtor has not passed through any of such payments to the Landlord.

9. By Order entered November 10, 2008, this Court authorized rejection of the Prime Lease retroactive to November 10, 2008 (provided that the Debtor surrenders possession not later than November 12, 2008).

BASIS FOR RELIEF

10. Section 365(d)(3) of the Bankruptcy Code requires that a debtor “timely perform all the obligations of the debtor . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected . . .”

11. Bankruptcy courts have held that a landlord is entitled to immediate payment of post-petition, pre-rejection rental payments pursuant to Section 365(d)(3). *See e.g., In re Trak Auto Corporation*, 277 B.R. 655, 665 (Bankr. E.D. Va. 2002) (“Until the debtor’s leases are rejected, debtor is required to pay rent to the landlord from the date the bankruptcy petition is filed until the date the lease is rejected.”), *rev’d on other grounds* 367 F.3d 237 (4th Cir. 2004); *In*

re Best Products Company, Inc., 206 B.R. 404 (Bankr. E.D. Va. 1997) (“Congress enacted § 365(d)(3) to guarantee that landlords would not be placed at a disadvantage for providing post-petition services to the debtor.”); *In re Pudgie’s Div. of New York, Inc.*, 202 B.R. 832 (Bankr. S.D.N.Y. 1996); *In re Barrister of Delaware, Ltd.*, 49 B.R. 446 (Bankr. D. Del. 1985).

12. Here, despite continued use and occupancy of the Premises and/or receipt of payments under the GGI and/or Staples Subleases for November 2008, neither the sublessees nor the Debtor has paid Landlord for rent and CAM charges due November 10-30, 2008 (or for the period November 1-9, 2008).

13. Landlord respectfully submits that Debtor should be compelled to compensate Landlord under the Prime Lease and pursuant to Section 365(d)(3). *See In re Trak Auto Corporation*, 277 B.R. 655, 669 (“ . . . landlord may move to compel payment of pre-rejection rent under § 365(d)(3).”).

14. Section 17.01 of the Prime Lease provides that the Debtor is obligated to reimburse Landlord for amounts necessary to compensate Landlord for all detriment proximately caused by Debtor’s defaults, or which in the ordinary course of things would be likely to result therefrom. Accordingly, Landlord respectfully requests that Debtor be directed to pay the attorneys’ fees and costs incurred by Landlord in seeking allowance and payment of the November Administrative Rent.

NOTICE

15. Notice of this Motion will be given to (i) counsel to the Debtors, (ii) the Office of the United States Trustee for the Eastern District of Virginia, Richmond Division, (iii) counsel for the Official Committee of Unsecured Creditors, (iv) all parties that have requested or receive

electronic notice in this case, including GGI, and (v) counsel for “Staples.” Landlord submits that no other or further notice of this Motion is required.

WAIVER OF MEMORANDUM OF LAW

16. Landlord respectfully requests that this Court treat this Motion as a written memorandum of points and authorities or waive any requirement that this Motion be accompanied by a written memorandum of points and authorities as described in Rule 9013-1(G) of the Local Rules of the U.S. Bankruptcy Court for the Eastern District of Virginia.

NO PRIOR REQUEST

17. No previous motion for the relief sought herein has been made to this Court or any other court, except as referenced in the Limited Objection filed on behalf of GGI at Docket No. 277, and the Joinder therein filed on behalf of Landlord at Docket No. 354, which are incorporated herein by reference.¹

¹ Landlord reserves all rights, including, but not limited to, its rights with respect to claims arising as a result of the rejection of the Prime Lease.

WHEREFORE, Landlord prays that this Court enter an order, substantially in the form attached hereto as “Exhibit B” compelling the Debtor to (i) pay it \$55,626.72 within 10 days of entry of an Order granting this Motion; and (ii) reimburse the Landlord for all of its reasonable and actual attorneys fees and costs incurred in pursuing the allowance and payment of November Administrative Rent, and granting such other, further relief as the Court deems just and proper.

Dated: December 12, 2008

/s/ John G. McJunkin

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2008, a true and complete copy of the foregoing was filed and served electronically using the Court's ECF System and was sent by first class mail, postage prepaid, to the entities at the addresses indicated below.

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